



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

January 31, 1996

Mr. Richard J. Ybarra
Open Records Coordinator
Office of the Attorney General
General Counsel Division
P.O. Box 12548, MC - 018
Austin, Texas 78711-2548

OR96-0136

Dear Mr. Ybarra:

You ask whether certain information is subject to required public disclosure under the Open Records Act, chapter 552 of the Government Code. Your request was assigned ID# 37992.

The Office of the Attorney General received a request for "[a]ll documents in draft or final form or on computer of the Attorney General related to the application(s) by the State of Texas to take primary responsibility for the implementation and enforcement of Title V of the Federal Clean Air Act, including, but not limited to, files with any associated certification by the Attorney General's Office, and any files addressing citizen participation in Title V activities." You assert that certain information in the files of the Natural Resources Division of the Office of the Attorney General are excepted from required public disclosure based on sections 552.101, 552.107(1) and 552.111 of the Government Code.

You raise section 552.101 and 552.107(1) of the Government Code in regard to the documents numbered 1, 2, and 3. You assert that the documents numbered 1, 2, and 3 "contain information within the privilege for confidential communications made for the purpose of facilitating the rendition of professional legal services to the client, the Texas Natural Resource Conservation Commission." Although early open records decisions permitted governmental bodies to withhold from disclosure attorney-client communications based on section 552.101, the attorney-client privilege is more specifically covered under section 552.107(1). *See* Open Records Decision No. 574 (1990); *see also* Open Records Decision No. 575 (1990) (predecessor statute of section 552.101 does not cover discovery privileges).

Section 552.107(1) states that information is excepted from required public disclosure if

it is information that the attorney general or an attorney of a political subdivision is prohibited from disclosing because of a duty to the client under the Texas Rules of Civil Evidence, the Texas Rules of Criminal Evidence, or the Texas Disciplinary Rules of Professional Conduct.

This exception applies only to information that reveals attorney advice and opinion or client confidences. *See* Open Records Decision No. 574 (1990). We agree that section 552.107(1) excepts from required public disclosure the documents numbered 1, 2, and 3.

You raise section 552.111 of the Government Code in regard to the documents marked 4 and 5. Section 552.111 of the Government Code excepts from required public disclosure:

An interagency or intraagency memorandum or letter that would not be available by law to a party in litigation with the agency.

This exception applies to a governmental body's internal communications consisting of advice, recommendations, or opinions reflecting the policymaking process of the governmental body at issue. *See* Open Records Decision No. 615 (1993). This exception does not except from disclosure purely factual information that is severable from the opinion portions of the communication. *See id.* Section 552.111 also protects a draft of a document that has been or will be released in final form and any comments or other notations on the draft because they necessarily represent the advice, opinion and recommendation of the drafter as to the form and content of the final document. *See* Open Records Decision No. 559 (1990).

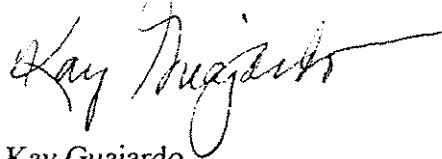
We agree that portions of document 4 contain advice, recommendations, and opinions reflecting the policymaking process of the Office of the Attorney General. Consequently, you may withhold those portions from required public disclosure pursuant to section 552.111 of the Government Code. We have marked the document accordingly.

Document 5 appears to be a draft of a document that you say will be released to the requestor in final form. This draft contains handwritten comments and revisions. We conclude that section 552.111 excepts the draft from required public disclosure. *See id.*

We are resolving this matter with this informal letter ruling rather than with a published open records decision. This ruling is limited to the particular records at issue under the facts presented to us in this request and may not be relied upon as a previous

determination regarding any other records. If you have questions about this ruling, please contact our office.

Yours very truly,

A handwritten signature in black ink, appearing to read "Kay Guajardo", with a long horizontal flourish extending to the right.

Kay Guajardo
Assistant Attorney General
Open Records Division

KHG/ch

Ref.: ID# 37992

Enclosures: Marked documents

cc: Mr. Richard Lowerre
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(w/o enclosures)